

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONALD E. PROCTOR, JR., :
: Petitioner, :
v. : Civil Action No. 05-683-JJF
THOMAS CARROLL, :
Warden, et. al., :
: Respondents. :

O R D E R

At Wilmington this 2 day of November, 2006;

IT IS ORDERED that:

1. Petitioner Ronald E. Proctor, Jr.'s Motion to Re-Instate His Habeas Corpus Proceeding Filed Pursuant to 28 U.S.C. § 2254 is **DENIED**. (D.I. 16.)


Petitioner filed his original habeas Petition in September 2005. In January 2006, Petitioner filed a Motion To Voluntarily Dismiss Petitioner's Habeas Proceeding because he was to be released in March 2006. (D.I. 12.) The Court granted Petitioner's Motion on January 31, 2006 and dismissed the Petition without prejudice, and the case was closed. (D.I. 13.)

Petitioner filed the instant Motion To Reinstate his prior habeas proceeding in September 2006. The Motion asserts that Petitioner violated the terms of his conditional release on June 12, 2006, and that he has been held at Level V pending an October 3, 2006 hearing before the Parole Board. Petitioner asks the

Court to reinstate his September 2005 Petition because he is now under the same constraints he was under when he filed his September 2005 Petition.

The Court concludes that the reasons asserted by Petitioner do not warrant re-instatement of the Petition filed in September 2005. Moreover, to the extent Petitioner's Motion for Reinstatement is asserted pursuant to Federal Rule of Civil Procedure 60(b), the Court declines to re-open the habeas proceeding. Petitioner voluntarily moved to dismiss his Petition, and there is no indication that Petitioner's request for dismissal was based on mistake, inadvertence, surprise, or fraud. Additionally, because the Court dismissed Petitioner's 2005 Petition without prejudice, Petitioner can file a new habeas proceeding without violating the prohibition against second or successive petitions contained in 28 U.S.C. § 2244(b).

2. The Clerk shall mail a copy of this Order, a form for filing a habeas petition pursuant to 28 U.S.C. § 2254, and an application to proceed in forma pauperis to the Petitioner at his most recent address on record.


UNITED STATES DISTRICT JUDGE